

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SOKOLOW, et al., : 04-CV-00397 (GBD) (RLE)
Plaintiffs, :
v. : 500 Pearl Street
PALESTINE LIBERATION ORGANIZATION, : New York, New York
et al., :
Defendants. : March 20, 2012

TRANSCRIPT OF CIVIL CAUSE FOR CONFERENCE
BEFORE THE HONORABLE RONALD L. ELLIS
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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1 THE CLERK: Parties on Sokolow, et al. v. Palestine
2 Liberation Organization, et al.

3 | [Pause in the proceedings.]

4 All counsel please identify yourselves for the
5 record.

6 MR. TOLCHIN: Robert Tolchin for the Berkman Law
7 Office for the plaintiffs.

8 MR. HILL: Good morning, Your Honor. Brian Hill and
9 Mark Rochon for the defendants, the Palestine Liberation
10 Organization and the Palestinian Authority.

11 THE COURT: Good morning.

12 MR. TOLCHIN: Good morning, Your Honor.

13 THE COURT: You bring reinforcements.

14 MR. HILL: If you consider Mr. Rochon to be
15

16 THE COURT: Okay. We have a number of discovery
17 issues that are still outstanding. This case is moving at a
18 glacier pace and I must say that I have -- there are some cases
19 which seem to have an inertia which prevents them from moving
20 forward. This unfortunately is falling into that category and
21 it cannot continue.

22 I'm going to talk about the disputes that are still
23 outstanding, much to my chagrin. I have -- I will list them
24 for you so that you will know what is on my agenda. There are
25 the interrogatory disputes. First, the defendants complain

1 about the plaintiffs' answers to interrogatories which the
2 plaintiffs claim are overbroad, but which seek to get
3 information concerning individuals who might have information
4 concerning allegations in the complaint. The plaintiffs take
5 issue with the questions they've asked the defendants
6 concerning some suspected terrorists and documents about their
7 being detained and before certain actions had taken place.
8 There is the plaintiffs' motion to issue a request for judicial
9 assistance with regard to Sana'a Shehadeh. There are the Rule
10 35 examinations and there is the defendants' requests for
11 economic damages from the plaintiffs. There's also pending,
12 but we -- which we aren't going to discuss today, is the BCC's
13 motion to quash the subpoena which I have *sub judice*. Okay.

14 Now --

15 MR. HILL: Your Honor, if I may, there's one
16 housekeeping matter.

17 THE COURT: Yes.

18 MR. HILL: It goes back to the November hearing. We
19 had a dispute, as you remember, about the terms of the
20 confidentiality order which Your Honor reserved -- resolved at
21 that hearing and we submitted through the email the proposed
22 order that contained the resolutions that embody Your Honor's
23 rulings. That's just not been entered, and I'd ask the Court
24 if you could enter it. And I brought an extra copy if that
25 helps the Court to get that one on the docket because that

1 third party asked me about it.

2 THE COURT: Okay. You put that on the docket? Do
3 you know the docket number?

4 MR. HILL: I didn't put it on the docket. What I did
5 is email the order to the orders of judgment email address and
6 I have --

7 MR. TOLCHIN: I think he said he wanted to put the
8 order on the docket.

9 MR. HILL: I just need -- we just need Your Honor to
10 execute it. You've already ruled on it.

11 THE COURT: All right. Hand it up to my deputy.

12 MR. HILL: Yes, Your Honor.

13 THE COURT: Okay. All right. Let's begin with the
14 interrogatories that defendants have asked the plaintiffs
15 concerning the -- since this has been going on for some time
16 and I think we may have had three attempts at responding.

17 MR. HILL: Yes, Your Honor.

18 MR. TOLCHIN: Your Honor, it would be helpful to me
19 if he would just say which letter. The letters have dates. If
20 we could just identify which date's letter you're bringing up.

21 THE COURT: Which date's letter?

22 MR. TOLCHIN: Yeah. But they wrote a letter on
23 January 13th. They wrote one on January 20th. It will just be
24 helpful for the record to know which application we're
25 discussing.

1 THE COURT: Okay. This has been going on for some
2 time. I didn't know there was a question about which
3 application there was. I mean, I know that there's question
4 about which letter, but -- you mean, you're not sure about
5 which dispute we're talking about now?

6 MR. TOLCHIN: There's a series of letters and
7 responses and chains back and forth and it -- I just thought
8 that since we're on the record it's helpful to know which
9 application and which response we're dealing with because they
10 all seem to involve interrogatories and that doesn't seem to
11 identify the chain specifically enough. I'm just trying to be
12 helpful. I apologize if it's created more trouble than it's
13 worth.

14 THE COURT: Okay. Well, this one we talked about at
15 our February conference and I had -- I'd ordered the plaintiff
16 to do more specific answers.

17 MR. TOLCHIN: Um-hum.

18 THE COURT: I didn't know there were other
19 interrogatories that were in dispute. Maybe this is more of a
20 problem than I had anticipated.

21 MR. HILL: No, Your Honor. I think we are all on the
22 same page. The most recent letter on this came from me and it
23 was dated February 21st to Your Honor. February 21, 2012. And
24 it recites the history, as Your Honor is recalling. We served
25 these interrogatories in August of last year. The plaintiffs

1 refused to answer them. We wrote you a letter. You ordered
2 them to answer them. They then gave answers which we discussed
3 at our last hearing which consisted of essentially saying, all
4 of the plaintiffs know this, all of the defendants know this,
5 all the employees of the United States know this. And Your
6 Honor gave them one last chance. You entered an order finding
7 that their last entry -- their last answers were sanctionable
8 but you deferred entering a sanction to see if they would
9 comply in good faith with your order that they answer them.
10 And I wrote on February 21st to explain why although we now
11 have names we, in fact, have the same 36 names for a whole
12 series of these interrogatories of people that obviously don't
13 have the knowledge that the interrogatories call for.

14 Just to pick one example, looking at interrogatory
15 number 3 of the defendants' first set of interrogatories to the
16 Gould plaintiffs and the Waldman plaintiffs, which requires
17 them to "identify all persons who you know have knowledge or
18 who you believe may have knowledge that the January 22, 2002,
19 shooting was planned and carried out by Ahmed Barghouti, Nasser
20 Aweis, Al-Masri, Al-Titi, Masalah, Ghanem, Abdullah, Ramadan,
21 and the John Doe defendants acting as agents and employees of
22 the P.A. and the PLO within the scope of their agency and
23 employment as alleged in paragraph 76, the first amended
24 complaint."

25 And then the plaintiffs give an answer on page 7 and

1 8 that goes on and lists about 50 people and 36 of them are
2 answered for every one of these interrogatories about the
3 defendants' liabilities and they start with the president of
4 the P.A., Mahmoud Abbas, and they end with former U.S.
5 Government officials including former Secretaries of State
6 Condoleezza Rice and Colin Powell, former U.S. Envoy Anthony
7 Zinni, and former White House Press Secretary Ari Fleischer.
8 And the plaintiffs have not given us any documents that show
9 that any of those people know anything about this shooting on
10 January 22, 2002.

11 We submit that that's a bad-faith answer and we think
12 Your Honor should sanction them by excluding any testimony from
13 these 36 witnesses that they just list over and over again.
14 Instead of just saying everybody in the defendants or everybody
15 in the United States they just give me the same 36 names over
16 and over. We think that's bad faith. Your Honor has ordered
17 them twice to answer these. They haven't done it in good
18 faith. We would request that you sanction them by precluding
19 them from relying these 36 witnesses.

20 THE COURT: You have something to say in your
21 defense, Counsel?

22 MR. TOLCHIN: Yes, I do, Your Honor. And I have -- I
23 actually have a letter that summarizes what I'm about to say to
24 Your Honor and I'd ask for permission to hand it up so that the
25 written record can be complete, but I don't mean that to say

1 that I'm going to avoid verbally answering the question.

2 THE COURT: You will be able to hand it up.

3 MR. TOLCHIN: Okay.

4 THE COURT: But I'm interested in your verbal answer.

5 THE COURT: Okay. Certainly, Your Honor. I'm not
6 going to quibble with, you know, every little word that Mr.
7 Hill just said. Your Honor didn't say you were going to
8 sanction us. Your Honor directed us to give a better answer.
9 We gave a better answer.

10 What Mr. Hill seems to be saying is, he doesn't like
11 our answer. Now, I'm going to pick one thing that Mr. Hill
12 spec -- you know, focused on. He say he can't believe that we
13 named the president of the Palestinian Authority as a witness
14 in response to the interrogatory he named. My response to that
15 is, of course we did. Our allegation in this case is that the
16 defendants, which is the Palestinian Authority and the PLO, had
17 a policy and implemented the policy of sponsoring and directing
18 and orchestrating terrorist attacks including the attacks that
19 injured our clients.

20 So it's our allegation that this policy came from the
21 top. It's our allegation that everybody involved, everyone
22 we've named from the leadership of the Palestinian Authority
23 was directly involved. Now, I say that Mr. Abbas I believe has
24 knowledge about this policy. Now, one easy way -- if the
25 defendant -- if the defendant doesn't think that's true, they

1 can bring Mr. Abbas for a deposition. They can bring him to
2 trial. He can say he didn't have knowledge. I believe he did
3 have knowledge and I don't for a moment understand the
4 defendants' complaint. They've asked me, who do I believe has
5 knowledge. Now --

6 THE COURT: Now, let me just stop you.

7 MR. TOLCHIN: Yes.

8 THE COURT: I hear what you're saying, although what
9 you started out saying seems to totally ignore our conversation
10 from the last time.

11 MR. TOLCHIN: Not in the slightest, Your Honor. We
12 identified --

13 THE COURT: Counsel, counsel, look. All right.

14 MR. TOLCHIN: You're --

15 THE COURT: Just to -- just so to be fair to you so
16 you don't say anything that's going to get you in trouble, all
17 right --

18 MR. TOLCHIN: Um-hum.

19 THE COURT: -- I have my recollection. I knew what I
20 meant and I'm telling you that at least what I meant this does
21 not respond to. Now, you --

22 MR. TOLCHIN: Your Honor, with all due respect I'm
23 dumbfounded. We identified in response to the interrogatory
24 for each attack. We identified --

25 THE COURT: Okay.

1 MR. TOLCHIN: -- the actual perpetrators of the
2 attacks --

3 THE COURT: Counsel, counsel, counsel, two things.

4 MR. TOLCHIN: Yeah.

5 THE COURT: One, when I start talking you have to
6 listen.

7 MR. TOLCHIN: Okay.

8 THE COURT: Two, I'm going to ask you a question.

9 MR. TOLCHIN: Um-hum.

10 THE COURT: And I want you to answer to the best of
11 your ability. When we discussed this the last time what did I
12 say I wanted you to put in these responses, if you recall?

13 MR. TOLCHIN: You wanted us to, as much as we could,
14 identify those people whom we believe have knowledge about each
15 of the areas that was inquired about and you didn't want us to
16 say all leadership of the defendant. You didn't want us to say
17 all people named in these documents. You wanted us to give
18 names of specific people as best we could for each question.

19 THE COURT: And that's what you took away from what I
20 said.

21 MR. TOLCHIN: Hundred percent.

22 THE COURT: Okay. Then -- okay. I'm not sure if
23 it's my ability to communicate or your ability to listen. All
24 right. I said the purpose of interrogatories is so that the
25 other party can know which individuals might be witnesses in

1 the case, all right, that you have on your side that will be
2 bringing to bear. You don't remember that?

3 MR. TOLCHIN: Only the people on my side? They asked
4 a question, "Identify each person who has knowledge of the
5 attack." We identified the attacker --

6 THE COURT: Counsel, counsel, counsel, all right.
7 I'm telling you what I said. Is it that you don't remember
8 that?

9 MR. TOLCHIN: If Your Honor's recollection is that we
10 were supposed to identify only the people --

11 THE COURT: No.

12 MR. TOLCHIN: -- from our side that we would be
13 bringing --

14 THE COURT: What I'm saying is -- Counsel --

15 MR. TOLCHIN: No, I don't remember anything like
16 that.

17 THE COURT: Counsel, I said the idea of asking
18 interrogatories is so that you can know who has the information
19 that the other side has that may be coming to trial so they can
20 determine who they want to depose. You don't remember that.

21 MR. TOLCHIN: Specifically those words, no. I have
22 the transcript here. Is there some part of it that Your Honor
23 wants to refer me to because I --

24 THE COURT: Okay. So since you -- you have brought
25 allegations about the leadership of the defendants. What

1 benefit are your answers to the defendant?

2 MR. TOLCHIN: The defendants' asked --

3 THE COURT: What benefit are your answers to the
4 defendant?

5 MR. TOLCHIN: We're identifying -- what benefit --
6 okay. By identifying these people we are saying that these are
7 the people whom we have knowledge -- whom we believe have
8 knowledge about these things.

9 THE COURT: But again --

10 MR. TOLCHIN: If we try to proceed in the case, to
11 call a trial, to seek to depose, to offer in opposition to a
12 summary judgment motion, evidence from any other people then I
13 presume the defendants will come with these interrogatories and
14 they'll say, no, you limited the universe of people with
15 knowledge to these specified people. That's what I believe
16 what the benefit is.

17 THE COURT: And, Counsel, you don't remember me
18 saying that what I want you to do is to give information about
19 people who you currently know and that it would not prevent you
20 from finding out information about people -- and this is --

21 MR. TOLCHIN: Your Honor, I --

22 THE COURT: As far as I know, you don't know anything
23 about what these people know.

24 MR. TOLCHIN: No, that's not true, Your Honor.

25 That's not true. And I've embarked on saying this a couple of

1 times and we've got sidetracked. We identified different
2 categories of people in response to these interrogatories. One
3 category of people that we identified is the actual
4 perpetrators of the attack, some of whom were -- many of whom
5 who are sitting in Israeli jails. These are people who have
6 been tried and convicted, in many cases have proudly admitted
7 what they've done, and we've identified those people as having
8 knowledge of the specific attacks. Mr. Hill didn't tell you
9 about those people when he's making fun of the fact that we
10 identified Mr. Abbas.

11 THE COURT: Okay. Well, first of all, I just --
12 well, shouldn't say first of all. I think your
13 characterization of him saying "making fun" is not a legal
14 description and it's --

15 MR. TOLCHIN: Oh, no, I think it is, Your Honor,
16 because he wants to say --

17 THE COURT: Well, Counsel --

18 MR. TOLCHIN: -- can you believe, Your Honor --

19 THE COURT: Counsel, Counsel, I don't think "making
20 fun" is a professional way to describe when a counsel disagrees
21 with you.

22 MR. TOLCHIN: Okay. But I don't think what Mr. Hill
23 is doing is a genuine argument. He wants to -- I heard his
24 remarks. What he said is he's telling Your Honor "they
25 identified the president, they identified Colin Powell, they

1 identified Ari Fleischer," as if by doing that we've done
2 something wrong. Well, Colin Powell made public statements.
3 Colin Powell made a demand to the Palestinian Authority that
4 particular people be arrested and it's our contention that the
5 Palestinian Authority arrested those people and --

6 THE COURT: Counsel, Counsel --

7 MR. TOLCHIN: -- released them.

8 THE COURT: Counsel, of course remember, when I start
9 talking you have to stop. All right. I don't see what -- I
10 mean, I understand that your position is that these questions
11 are too broad. Okay. And it's certainly possible for you as
12 counsel to say -- to describe what you did before, that is,
13 members of the administration, Colin Powell, Condoleezza Rice
14 because of statements they had made, but the relevance of that
15 for a trial is *de minimis* because these are not people who are
16 going to be at a trial. Understand, we're trying to get
17 discovery that's relevant for a trial and I don't see any of
18 these people being relevant to any testimony at a trial. I
19 don't see them being relevant to any motion that the defendants
20 would make where you would have to come in with anything from
21 any of these people in response to any motion that the
22 defendants would make.

23 MR. TOLCHIN: Your Honor, what you said is completely
24 wrong. These people are very relevant. I see the chairman of
25 the Palestinian Authority as having been -- is exactly a

1 witness who we would want to call at trial. I would want to
2 take his deposition. We've taken his deposition in other
3 cases. These are the people who by virtue of their position at
4 the time --

5 THE COURT: Okay. Counsel, I --

6 MR. TOLCHIN: Interrupting me again.

7 THE COURT: What you did was fine. I mean, you have
8 36 people that you've listed and obviously to the extent that
9 their leadership of the defendants you can make an argument
10 that you'll -- it would be relevant to have those at the trial.

11 MR. TOLCHIN: Absolutely.

12 THE COURT: But what I'm -- but understand that when
13 I ask you the question, when I phrased it I was talking about
14 Colin Powell. I was talking about Condoleezza Rice. I don't
15 see them as being relevant to a trial.

16 MR. TOLCHIN: I don't think that's true, Your Honor.
17 Colin Powell said to the Palestinian Authority, this particular
18 person should be arrested. That's a fact. The Palestinian
19 Authority then went and arrested him --

20 THE COURT: Counsel, counsel --

21 MR. TOLCHIN: -- and released him.

22 THE COURT: Counsel --

23 MR. TOLCHIN: Can I ever finish?

24 THE COURT: Counsel --

25 MR. TOLCHIN: Can you --

1 THE COURT: Counsel, look --

2 MR. TOLCHIN: You're interrupt -- I know you asked me
3 not to interrupt you, but every single time I've tried --

4 THE COURT: Counsel --

5 MR. TOLCHIN: -- to talk, you've cut me off. It's
6 like you're -- it's like --

7 THE COURT: You know, I -- Counsel, I tell first year
8 law students that when the court is asking questions, that's
9 the thing that you answer. Regardless of what arguments you
10 want to make, you -- you fail to see the fundamental thing in
11 an argument and that is if the Court has a question, your
12 responsibility is to answer the Court's question, not to make
13 your point.

14 MR. TOLCHIN: I apologize, Your Honor, but I'm
15 feeling frustrated that I'm answering one question --

16 THE COURT: Well, but --

17 MR. TOLCHIN: -- and I never get to finish the
18 answer.

19 THE COURT: But then you start to say -- well, you
20 start to say something like, of course, Colin Powell is
21 relevant to a trial in this case.

22 MR. TOLCHIN: Absolutely.

23 THE COURT: But I'm talking about testimony at a
24 trial. There is going to be no testimony from Colin Powell at
25 a trial in this case.

1 MR. TOLCHIN: Why is that? If I serve him a subpoena
2 I presume he'll come.

3 THE COURT: And he will -- and you -- you believe
4 that what's going to happen in this trial is you're going to
5 have Government officials from the United States testifying
6 about why they made these statements in the media?

7 MR. TOLCHIN: No. The fact that he made the
8 statement.

9 THE COURT: Well, the fact that he made the
10 statement --

11 MR. TOLCHIN: I mean, a --

12 THE COURT: -- what's the relevance to that --

13 MR. TOLCHIN: Be --

14 THE COURT: -- to the trial?

15 MR. TOLCHIN: Okay. I'm going to try it one more
16 time. Colin Powell asked the Palestinian Authority -- told the
17 Palestinian Authority that a particular individual should be
18 placed into custody because he had carried out a terrorist
19 attack. The Palestinian Authority then with that knowledge
20 received from Colin Powell and others -- and other sources,
21 they arrested him and then released him and in short order he
22 went and blew up the cafeteria at the Hebrew University.

23 Our -- one of our theories of liability is that by
24 arresting this person with the full knowledge that this person
25 is a loose cannon, a ticking time bomb of a terrorist, the

1 Palestinian Authority went through the motions of arresting him
2 to placate the United States for political reasons and then
3 promptly released him and let him go about his terrorist ways
4 knowing full well that his -- that that was his intention.

5 THE COURT: So did you --

6 MR. TOLCHIN: So that chain of events --

7 THE COURT: Your point being that if an allegation by
8 an official of the United States that establishes it as a fact.

9 MR. TOLCHIN: The allegation is estab -- but what --
10 I have no doubt that is true but --

11 THE COURT: That was not my question.

12 MR. TOLCHIN: -- at least establishes the knowledge,
13 the state of mind of the defendant. This wasn't an accident
14 that the guy got out on parole and how could they have known
15 that he was going to do a terrorist attack. They had specific
16 knowledge and we argue it meshes right in with the intention
17 and plan and their other terrorist attacks and their overall
18 policy of orchestrating these terrorist attacks while trying to
19 pretend for a cover story that, oh, how could we have known, it
20 has nothing to do with us. So --

21 THE COURT: Okay. So --

22 MR. TOLCHIN: -- we have Colin Powell making a public
23 statement. We have Condoleezza Rice making a public statement.
24 We have -- this guy was arrested and held in the Palestinian
25 Authority headquarters.

1 THE COURT: Okay. Just so I'll be clear, though.
2 All of the things that you have in your answers are not
3 based -- is there anything in your answer that's actually based
4 on knowledge or are these just beliefs?

5 MR. TOLCHIN: No. Everything is based on their
6 leadership roles, their public statements that they made.
7 These guys go on TV and talk. They make statements. There's
8 nothing here -- we didn't just go through their website and
9 pick all their leadership and say, we're going to put them on
10 the list. Every single person we put on the list --

11 THE COURT: Okay. Understand. Do you hear my
12 question? Everything that you have here is not based on facts
13 but your belief. For example, even when you talk about the
14 leadership of the defendants you don't know what they know.
15 This is what you believe that they know.

16 MR. TOLCHIN: Well, obviously I'm not allowed to talk
17 to them.

18 THE COURT: Right.

19 MR. TOLCHIN: Only they're allowed to talk to them.

20 THE COURT: Okay. So -- I understand that, but -- so
21 is there anything in any of your answers that's actually based
22 on somebody who has knowledge or is this all based on beliefs?

23 MR. TOLCHIN: I really don't understand your
24 question, Your Honor. Our belief is that all these people that
25 we identified have knowledge either of the specific carrying

1 out of the attack, and that's mostly the people who were
2 convicted, the perpetrators, or of the overall policy of the
3 Palestinian Authority and the PLO during the relevant years.

4 THE COURT: So you're saying -- all right. I'll ask
5 it again. Of the individuals that you have listed, okay -- and
6 understand that there are -- if I take the leadership of -- I
7 mean, there are people who take leadership of the United States
8 and they might say the president knows this because he's in the
9 leadership role, but the question is, in terms of trial
10 questions or discovery that's going to lead us and help us
11 prepare for trial are you alleging that other than your firm
12 belief that the defendants are guilty, which presumes the fact
13 you're going to try to prove at trial, other than that strong
14 held belief, whatever the basis for that is, is there anybody
15 that you've listed that's based on knowledge as opposed to
16 belief?

17 MR. TOLCHIN: Knowledge of whom?

18 THE COURT: Knowledge that the person knows what it
19 is that the --

20 MR. TOLCHIN: All of them, Your Honor. We didn't
21 make anything up.

22 THE COURT: Okay.

23 MR. TOLCHIN: All of these people to our knowledge
24 were involved in one aspect or another --

25 THE COURT: You mean, Colin Powell --

1 MR. TOLCHIN: -- setting the policy --

2 THE COURT: Colin Powell knows that these people were
3 involved in preparing -- read the question again.

4 MR. TOLCHIN: Colin Powell knows --

5 MR. HILL: The answer, Your Honor, is that --

6 THE COURT: Read the question again.

7 MR. HILL: The answer is that "Colin Powell knows
8 that the January 22, 2002, shooting was planned and carried out
9 by Ahmed Barghouti, Nasser Aweis, Al-Masri, Al-Titi, Masalah,
10 Ghanem, Abdullah, Ramadan, and the John Doe defendants acting
11 as agents and employees of the PLO and P.A. within the scope of
12 their agency" --

13 MR. TOLCHIN: Based --

14 MR. HILL: -- that's the answer I've got.

15 MR. TOLCHIN: Based on Colin Powell's public
16 statements we believe that Colin Powell has some knowledge
17 relevant to those topics.

18 THE COURT: Okay. You believe that he has some
19 knowledge. You understand what you --

20 MR. TOLCHIN: Yes, based on what he said.

21 THE COURT: Okay.

22 MR. TOLCHIN: Believe.

23 THE COURT: Counsel, let me ask my question again.
24 Maybe I'm not being clear. All these people based on your
25 belief as opposed to you knowing what they know. I mean, you

1 haven't discussed this with any of these people such that
2 you -- I mean, you put stuff in your complaint and you made
3 allegations. The defendants say, who do you know that has
4 knowledge of this. You -- just take Colin Powell, for example.
5 You don't know what Colin Powell knows.

6 MR. TOLCHIN: We know what Colin Powell has said.

7 THE COURT: Okay. So -- but you don't know what he
8 knows. Is that correct?

9 MR. TOLCHIN: Other than what he said. I assume he
10 knows what he said.

11 THE COURT: Okay. Did he say he had the knowledge
12 that --

13 MR. HILL: This is the problem, Your Honor. I've got
14 document requests outstanding for this sort of material. There
15 are no statements by Secretary Powell about any of these
16 individuals that the plaintiffs have produced to me. There is
17 no statement about Secretary Powell about the January 22, 2002,
18 shooting in which Ms. Gould and Mr. Waldman were allegedly
19 injured. There's nothing like that. And not only is there
20 nothing like that, there's nothing like that for the six other
21 attacks, let alone for the 40 people that are listed in the
22 same way that Secretary Powell --

23 MR. TOLCHIN: At the same time --

24 MR. HILL: Just --

25 MR. TOLCHIN: -- as these terrorist attacks were

1 being carried out at the height of the Intifada --

2 THE COURT: Counsel, all right. There's a second
3 rule. You don't interrupt the other counsel. I think I've
4 tried to not have you interrupt each other.

5 MR. HILL: Thank you, Your Honor. As we said in our
6 letter, it's absurd to believe that these 36 people are part of
7 a conspiracy that know who committed each of these seven
8 attacks and that they did it in their capacity as employees of
9 the P.A. and the PLO, both defendants, within the scope and the
10 agency of their employment. And that's why it's a bad-faith
11 answer and that's why a sanction is appropriate.

12 And we submit -- Your Honor noted earlier that we're
13 not moving very quickly through discovery. We've got to be
14 done with fact discovery by December. We are not going to have
15 time to do depositions of 36 or 40 people --

16 THE COURT: Okay. Here --

17 MR. HILL: -- that don't know anything about the
18 case.

19 THE COURT: Here's the resolution, gentlemen. All
20 right. This is -- that was your answer. And I'll decide
21 whether or not there's a need for sanctions or how to deal with
22 this issue because the answers are what they are. I've heard
23 plaintiffs' counsel talk about what it is. I disagree about
24 what the words "knowledge" and "belief" means, but as to what
25 this means for a trial that's on me. I'll decide what that

1 means.

2 MR. TOLCHIN: Can I make a suggestion which maybe
3 will be helpful? I would be happy to prepare -- it would take
4 a little time, but I would be happy to prepare with some form
5 of a list or a chart showing you for each of these witnesses
6 why we -- what the source of it is. In other words, if I said
7 Colin Powell, I'll point you to the document -- to the publicly
8 available source where we got that from so that you can see
9 that none of this is just made up. I'd be happy to submit such
10 a chart.

11 THE COURT: Okay. And I think you misinterpreted my
12 skepticism, Counsel. I don't think you made it up in the sense
13 that it's -- you know, you just -- you know, just grabbing
14 things out of air. I think what you're doing is, you have a
15 view of what happened here and you have a view of who would
16 have necessarily had to know about it based upon your belief
17 and you've extrapolated that and that's the way you've done it.
18 I mean, I believe you believe this. But it's not -- whether or
19 not it's a fact -- I mean, you're assuming the fact that you're
20 trying to prove and you believe the fact that you're trying to
21 prove and if Colin Powell made statements -- I don't know what
22 things he made. You want to read things into those things,
23 but --

24 MR. TOLCHIN: Your Honor, I just want to point out --

25 THE COURT: I'm not sanctioning you under Rule 11 or

1 anything.

2 MR. TOLCHIN: No, I understand. I want to -- if I
3 may, I want to say two things. Number one, the question that
4 we're answering in each case if we look at their
5 interrogatories -- and I'm just reading, for example,
6 interrogatory 2, which I just opened up to, and the pattern
7 repeats: "Identify all persons you know have knowledge or who
8 you believe may have knowledge that" blah, blah, blah.

9 So the distinction Your Honor is drawing between
10 people we know have knowledge and people who we may believe
11 have knowledge, even though I think we know they all have
12 knowledge, the distinction is not fair given the question.
13 That's the first point I wanted to make.

14 The second thing I wanted to say is the sanction. I
15 wanted to point out that the sanction that Mr. Hill is arguing
16 for seems a little bit inverted. He's saying that because we
17 identified these people and he doesn't like how he identified
18 them therefore we shouldn't be able to use these witnesses at
19 trial. I don't see how that sanction flows. If he thinks
20 these people really don't have knowledge he should be happy to
21 limit the plaintiffs' case as much as possible to these named
22 witnesses. It's only because, I would submit, that the people
23 we identified touch a nerve because they really do not have
24 knowledge and they're in charge of the people who have
25 knowledge and they're very close to the people who have

1 knowledge. That's why he's desperate to find some way to
2 juggle out of these witnesses being allowed to testify at
3 trial. If Mr. Abbas knows nothing, he can come and say he
4 knows nothing, if he's truthful.

5 THE COURT: Well, what it comes down to, Coun --
6 frankly, Counsel, is whether or not when you're -- if you
7 decide to call these people at trial whether or not the trial
8 judge would think that these answers are appropriate enough for
9 you to call them as witnesses based upon these responses, I
10 suggest to you that regardless of the conversation that we're
11 having here today, I would not -- I would not have the
12 confidence that if you suggested that, well, you know, we
13 disclosed Colin Powell, that the trial judge is going to say,
14 oh, well, okay, I'll issue a subpoena for Colin Powell based
15 upon these answers, but --

16 MR. HILL: May I respond just briefly, Your Honor?

17 THE COURT: Yes.

18 MR. HILL: Here's the concern. We're halfway through
19 fact discovery. We've been at this for nine months. We've got
20 another nine months to go. And I've got a list of 36 people
21 that appear to me to have no good-faith basis to be named as
22 witnesses for the specific events that I've asked the
23 plaintiffs to identify them about. The plaintiffs have
24 identified them as persons with knowledge of all seven of these
25 attacks, the details of the attacks, who did it, how they did

1 it, who they conspired with, where they got their weapons, et
2 cetera, et cetera.

3 MR. TOLCHIN: No.

4 MR. HILL: And my concern is I think it should be
5 obvious to the Court by now. The plaintiffs are trying to
6 extend the discovery period in the case. I don't want this to
7 become the basis of trying to extend the discovery period and
8 that's why I'm asking for the sanctions.

9 THE COURT: Well, okay. First of all, it's not going
10 to extend the discovery period, but the last thing I'll say is
11 this. I thought I had made it clear at the last session the
12 distinction between knowing and believing and that if you had
13 some people that you wanted to make it clear that it was based
14 on belief, you could go ahead and do that. That's why I tried
15 to ask you even today whether or not these are people that it's
16 based on belief because, you know, if the defendants want to
17 discount your belief and say that's not a sufficient basis for
18 us to go forward with depositions then, you know, at least they
19 know it's based on your belief as opposed to any specific
20 knowledge you have that any of the individuals you've listed
21 have specific knowledge of the very precise things that are
22 indicated in the interrogatories.

23 MR. TOLCHIN: Your Honor, if I may, what Mr. Hill
24 said and what I think Your Honor is picking up on is just
25 inaccurate. There at -- when we say that Mahmoud Abbas knows

1 about the particular attack -- you know, there's different
2 aspects to the attack. Yes, going out and buying the gun and
3 buying the weapons, and choosing the ambush site, and buying
4 the disguise or those particulars and choosing the date and
5 time, that's one aspect of planning the attack. But if you're
6 the paymaster, if you're the chairman of the organization
7 that's funding the department or organization or group that's
8 carrying out this attack, that's another form of knowledge.
9 Maybe Mahmoud Abbas doesn't know who bought the gun or what day
10 they were going to do it. Maybe he wasn't involved in
11 particularly picking the target, but when his organization is
12 funding the group that's carrying out this attack that is also
13 knowledge relevant to the carrying out of the attack.

14 We're not saying, as Mr. Hill seems to be suggesting
15 that we are, we're not saying that the upper echelon
16 Palestinian Authority leadership chose each and every attack
17 and was involved in the nitty-gritty day-to-day planning, but
18 by implementing the policy of encouraging these attacks, by
19 doing such things as giving stipends to the attackers, and
20 pensions to the suicide bombers' families, and paying these
21 people -- if they get arrested paying them a salary while
22 they're in prison, and funding the groups that carried out
23 these attacks, and in some cases in some of the attacks at
24 issue here it was actually employees, police officers,
25 Palestinian Authority Security personnel who were involved in

1 carrying out the attack. So if a Palestinian Authority
2 Security personnel was involved in the attack and he did it
3 with the knowledge or consent of his superiors, we named the
4 superiors too, even though they may not have been involved in
5 the specific carrying out of the plan.

6 He's trying to slice it and dice it and say that all
7 these people have to have not -- had knowledge of the
8 particular attack. We never said that. Some of these people
9 are identified because they know about the particulars of
10 individual attacks; some of them have knowledge of the overall
11 plan, call it the conspiracy, call it the bigger picture. And
12 I think his remarks are just completely unfair. They're
13 completely wrong. And I don't think that we have done anything
14 improper.

15 THE COURT: Okay. So I take it that you have not
16 sought to distinguish those people in your responses, though.

17 MR. TOLCHIN: Only be -- no, but only because the way
18 the question was asked, it asked for everything together. Each
19 question asks for like "identify everybody who has knowledge
20 of" and then like five categories, like meshed together in a
21 compound fashion, so we answered with a list. They didn't --
22 these were not broken down individual questions.

23 And I would submit, Your Honor, that the -- that
24 complaining that we're going to run out of time, we served
25 these 36 people back I believe it was February 9th. So here we

1 are -- what is today -- March 20th. I haven't seen a
2 deposition notice. I haven't seen any -- he's complaining that
3 we're going to run out of time, but what has he done with these
4 names since he got them more than a month ago?

5 THE COURT: And what did you expect him to do with
6 them?

7 MR. TOLCHIN: Well, I would expect if he was genuine
8 about wanting to pursue any form of discovery with respect to
9 them he should pursue it, but I don't think --

10 THE COURT: Well, for example -- no, seriously.
11 Since we're -- since you've mentioned it, what would you have
12 him do with the names that you have? I mean, let's say you
13 were on his side. What would you do in that position?

14 MR. TOLCHIN: Well, in that position if -- as to the
15 witnesses who are his employees, I'd probably do nothing
16 because why should --

17 THE COURT: Okay. And with --

18 MR. TOLCHIN: I'd bring them to trial.

19 THE COURT: Okay. But the ones that -- and the ones
20 that aren't his employees, what would you do then?

21 MR. TOLCHIN: Consider whether you want to --

22 THE COURT: Based on what?

23 MR. TOLCHIN: Consider whether you want to seek to
24 depose them or --

25 THE COURT: Based on what?

1 MR. TOLCHIN: Based on what you know about them and
2 based on --

3 THE COURT: But what do you --

4 MR. TOLCHIN: And based on the strategic
5 consideration of whether you think -- whether you assess that
6 the plaintiff is really going to be able to get these people to
7 come to trial or not.

8 THE COURT: I know, but based upon your description
9 of how you put the people into the answer --

10 MR. TOLCHIN: Um-hum.

11 THE COURT: -- how would he be able to determine who
12 to depose?

13 MR. TOLCHIN: Well, that's why I'm -- I think you're
14 making my point, Your Honor. It's he's crying crocodile tears.
15 He has no intention of deposing any of these individuals who
16 are functionaries of the defendant. He has no intention of
17 deposing the perpetrators of the attacks who are convicted and
18 sitting in jail. There's no reason he would do that because it
19 would be handing me the opportunity to gather evidence. So
20 that leaves the handful of people, Condoleezza Rice and Colin
21 Powell, who my guess is that his assessment would be, why
22 should I depose these people because the plaintiff is going to
23 have a hard time getting them to come to court.

24 So from his perspective, the answer we gave him is
25 very helpful. And the fact that he's coming in to Your Honor

1 and complaining that because of the answer he's been deprived
2 of the ability to do discovery, how? How? We told him these
3 people and they're for the most part people who he controls,
4 who he can talk to every day if he wants to, and who had
5 complete access to. So how has this hampered him in any way
6 that we should be sanctioned?

7 THE COURT: Okay. That's been very helpful.

8 Anything else before I take this under submission?

9 MR. HILL: Unless Your Honor has something for me I
10 think we've gone at it at length.

11 THE COURT: No, that's it. All right. The plaintiff
12 has issue with some of your answers and that concerns the two
13 suspected alleged or proven terrorists. Your response says,
14 you know, you can't find anything. I'm not sure what that
15 means.

16 MR. HILL: Well, I have an update. So as I said in
17 our letter, we are continuing our investigation to try and
18 provide the names that are responsive to the interrogatories.
19 Let's put a pin in the issue about whether we have to do to
20 get -- do more than give names. We have twice supplemented the
21 interrogatory concerning the arrest of Abdullah Barghouti. We
22 initially provided a name of the person who happens to be the
23 30(b)(6) designee on the Rule 30(b)(6) notice that the
24 defendant -- that the plaintiffs have noticed the P.A. on this
25 same issue. And then I provided on Friday a second

1 supplemental response with two additional names.

2 At this point in time I have those three names. I've
3 provided the names of those individuals. I've provided their
4 identification numbers as the plaintiffs have requested and I
5 am continuing my investigation. We are continuing preparing
6 the witness to testify at a Rule 30(b)(6) deposition that the
7 plaintiffs have noticed on this very topic. And I respectfully
8 submit that the Court doesn't need to do anything. I'm doing
9 what the rules require, which is to supplement as the
10 information becomes available to us as counsel. We'll continue
11 to do that. We've done that in good faith twice since the
12 letters were written last month and we're going to have a
13 30(b)(6) deposition on both of these --

14 THE COURT: You mean --

15 MR. HILL: -- issues at the end of next --

16 THE COURT: You're going to have a 30(b)(6) witness
17 on this question about these two individuals being detained and
18 then let go?

19 MR. HILL: And then released, correct. The
20 plaintiffs have noticed that deposition and it was originally
21 noticed --

22 THE COURT: They've noticed a 30(b)(6)?

23 MR. HILL: They've noticed a 30(b)(6) on that topic.
24 It was originally set for this week by agreement. We've pushed
25 it back to the end of April. We anticipate producing General

1 Mohammed Jebrini [Ph.], who was a senior official within the
2 Palestinian Security Services during this time frame, to
3 testify about these two individuals as well as three others
4 that the plaintiffs have noticed 30(b)(6) deposition about
5 whether they were arrested by the P.A. at any point in time --

6 THE COURT: And what about documents?

7 MR. HILL: -- and were released. There are no
8 document requests pertaining to these issues that --

9 THE COURT: There's only about --

10 MR. HILL: -- I've been -- that I've received.

11 THE COURT: -- these are the interrogatories or --

12 MR. HILL: Correct, Your Honor.

13 THE COURT: And you're going to -- is that correct,
14 Counsel, that that's going to be a 30(b)(6) that's going to
15 address these questions?

16 MR. TOLCHIN: There is going to be a 30(b)(6). I'm
17 not holding my breath about how it will address these
18 questions, but I'll wait for my turn to give you a full answer.

19 THE COURT: Well, that's the answer to the question
20 is there will be a 30(b)(6) to address the question. Whether
21 or not the addressing of the question is adequate is what's
22 your question.

23 MR. TOLCHIN: Sure.

24 THE COURT: So, yes, there will be somebody to
25 address it.

1 MR. HILL: Yes, we've noticed a 30(b) (6) witness --

2 THE COURT: Okay.

3 MR. HILL: -- and we'll obviously deal with the
4 adequacy if that effort takes place.

5 THE COURT: All right. This question about Sana'a
6 Shehadeh, what's -- first of all, why and why now? I mean, is
7 this somebody we just found out about?

8 MR. HILL: Your Honor, Mr. Rochon is going to address
9 that on our behalf.

10 THE COURT: Okay. But --

11 MR. ROCHON: I thought that was for him, though,
12 so --

13 MR. TOLCHIN: Yeah.

14 THE COURT: No, that's for you. I mean, what's -- I
15 know you've asked for this assistance from the Hague and the
16 first question that occurred to me is this case has been going
17 on for some time and I'd be concerned about sort of Johnny-
18 come-lately people. I mean, is this somebody who you just
19 found out about?

20 MR. TOLCHIN: I can't answer that question as I stand
21 here. I don't want to commit myself as to when we found out
22 about it without checking.

23 THE COURT: Well --

24 MR. TOLCHIN: I --

25 THE COURT: -- can you give me a ballpark? I mean --

1 MR. TOLCHIN: What?

2 THE COURT: Was this --

3 MR. TOLCHIN: No, I can't. If you want -- if we
4 took -- I'd have to check with somebody else and I just don't
5 have that answer for you and I don't want to mis --

6 THE COURT: All right. Well, we'll --

7 MR. TOLCHIN: I don't want to misrepresent.

8 THE COURT: We'll defer this but what I want you to
9 understand is --

10 MR. TOLCHIN: I could answer that in writing.

11 THE COURT: Okay. You can do that. Understand that
12 one of my considerations particularly when we're going to use
13 something as extraordinary as a Hague letter is the timeliness
14 of the request, that is, because those inherently cause delays,
15 as everybody knows, if you ask me to do a Hague request for
16 somebody in March of 2012 and I will undoubtedly want to know
17 why is it that we're being asked to do this at this point in
18 time because, you know, I'm not going to have six months when a
19 case -- we have a 2004 case I believe here. And so at the very
20 least I'd have some representations about when and why this
21 person became so important that we needed to go through this
22 step and why they would not -- why this was not brought up
23 earlier.

24 MR. TOLCHIN: Your Honor, the fact it is a 2004 case
25 but that time isn't chargeable to the plaintiffs.

1 THE COURT: Okay.

2 MR. TOLCHIN: So --

3 THE COURT: It doesn't really matter if it's 2004,
4 2006. Even if it's 2008, it would still be the same question
5 if you have a period of discovery and you started discovery if
6 you want to depose those -- and it'd actually be the same if
7 you had a regular deposition. Forget the Hague letter. And if
8 you wanted to start doing depositions of people and you want to
9 start noticing depositions, I want to know why they're coming
10 up now and why they didn't come up earlier.

11 MR. TOLCHIN: Your Honor, are we -- I appreciate
12 that. Are we still addressing the Barghouti and Hashaika
13 issues because I --

14 THE COURT: I --

15 MR. TOLCHIN: I'd like to --

16 THE COURT: There is more you wanted to say about it
17 besides 30(b)(6)?

18 MR. TOLCHIN: For sure. For sure.

19 THE COURT: Oh. What --

20 MR. TOLCHIN: No, no. There really is. You know,
21 saying that there's a 30(b)(6) witness coming it's -- I think
22 if you -- I'd like Your Honor to see for each of these the
23 bigger picture because I think that there is a -- call it a
24 game a-foot, an evasion by the defendants and, you know,
25 sometimes you have to step back to see the bigger picture.

1 Sometimes you don't see it happening step by step. So I'd just
2 like Your Honor to -- I'd like to run through the facts as they
3 played out on each of these. I promise not to take up too much
4 time.

5 THE COURT: Okay. But why are we through the facts?
6 I mean, is -- my understanding is that you asked the question.
7 You wanted information on these two people who were arrested
8 and then released. You've now asked for a 30(b)(6). The
9 defendants said there are no documents. Whether or not if --
10 is that what you're taking issue with?

11 MR. TOLCHIN: No, Your Honor. We asked -- we served
12 interrogatories asking for them to identify people who know
13 about these detentions. Now, first they told us a whole lot of
14 objections. We met and conferred and asked them to drop -- I'm
15 talking about Barghouti right now. We asked them to drop the
16 objections that's in our meet and confer and we wrote Your
17 Honor a letter asking for a conference which I gather is now
18 asking for the objections to be overruled.

19 In the meanwhile, we served a 30(b)(6) notice. Why?
20 Because one of the things that the defendants said when we
21 asked Your Honor to overrule the objections is they said, why
22 they asked you for this as an interrogatory, they should pursue
23 a 30(b)(6) notice. Okay.

24 So we accepted the invitation. We served a 30(b)(6)
25 notice. However, if they bring us a witness who is a 30(b)(6)

1 witness, somebody who they've prepared to speak on behalf of
2 the entity and tell us what the entity claims to know about
3 this detention of Mr. Barghouti, that is not a substitute.
4 That is not a replacement for having them tell us who in their
5 organization has knowledge about the detention of Mr.
6 Barghouti. Presumably, this 30(b) (6) witness is getting his
7 information from somewhere. Somebody must be -- either he
8 knows of his personal knowledge, in which case they should
9 identify him, or he's gathering information from others who
10 have knowledge, in which case there's no reason why they
11 shouldn't tell us who in the organization has knowledge or he's
12 reviewing documents, in which case they should tell us there's
13 X, Y and Z documents out there, so --

14 THE COURT: Okay. I hear what you're saying,
15 although now I'm not sure why you're in a 30(b) (6).

16 MR. TOLCHIN: We scheduled a 30(b) (6) because they
17 said -- look, if they had answ -- is they had said --

18 THE COURT: I understand that, but if what you're
19 saying is a 30(b) (6) is not a resolution to the
20 interrogatories, I'm not sure why we're having a 30(b) (6). Did
21 I miss something?

22 MR. TOLCHIN: They had said that the reason why --
23 that if we want to know about this, we should serve a 30(b) (6)
24 notice, so we did. And if this witness comes and tells us --
25 and by the way, they haven't told us -- one of our -- one

1 section of our -- one item in our interrogatory was for anyone
2 you identify tell us what's the general scope of his knowledge
3 and how he comes to know it, what was his rank and position,
4 basic information about who he is and how he knows and what he
5 knows.

6 THE COURT: Okay.

7 MR. TOLCHIN: And --

8 THE COURT: Let me just stop you because I'm only
9 interested in this: one, there's the issue raised by Barghouti
10 and --

11 MR. HILL: His name is Hashaika, Your Honor.

12 THE COURT: Hashaika. And what the defendants have
13 represented to me is there's going to be a 30(b) (6). I thought
14 that was in lieu of the interrogatories.

15 MR. HILL: No. I'm doing both, Your Honor.

16 THE COURT: Oh, okay.

17 MR. HILL: I'm answering the interrogatories --

18 THE COURT: So --

19 MR. HILL: -- to the extent required by the Local
20 Rule which is to provide the names. I've done that.

21 Identified three people who I found know Barghouti. I'm still
22 look on Mohammed Hashaika --

23 THE COURT: Okay. Then why are we still --

24 MR. HILL: -- and as I find them I will do that.

25 THE COURT: -- discussing this?

1 MR. HILL: I don't understand. I think -- we've
2 agreed to answer them to the extent the Local Rules require.
3 We're also going to have a 30(b)(6) at the end of April. I
4 don't think there's any need for Your Honor to do anything at
5 this point.

6 THE COURT: Well, then what are we -- why are we
7 discussing this?

8 MR. TOLCHIN: Your Honor, they have not told us who
9 the people are. They've said a name but they have not told us
10 a rank. They have not told us what his position was and they
11 have not told us that these are the only people who have
12 knowledge because everything they tell us --

13 THE COURT: Wait a minute. Have they answered them
14 or have they haven't answered them?

15 MR. TOLCHIN: There's a raft of objections -- a raft
16 of objections. That's what we wrote to Your Honor saying --

17 THE COURT: Okay.

18 MR. TOLCHIN: -- take away these objections so we
19 know --

20 THE COURT: But you -- okay, are you going to answer
21 them or not? I'm --

22 MR. HILL: Your Honor, I have already answered them
23 to the extent the Local Rules allow them to be asked. They
24 don't just ask for names. As Your Honor may recall they --

25 MR. TOLCHIN: But let me --

1 MR. HILL: They essentially require a biography of
2 each person, which the Local Rules don't allow and I --

3 MR. TOLCHIN: I can short-circuit this --

4 THE COURT: Wait, wait, wait, wait, wait. I'm sorry.

5 MR. HILL: So to the extent we have identified the
6 names of employees with knowledge about the arrests and alleged
7 release of these two persons, we have provided them. To the
8 extent we learn them, we will provide those names and we will
9 also produce a 30(b)(6) witness in the end of April to testify
10 about the P.A.'s knowledge of these names.

11 THE COURT: Okay. But I'm not sure -- what Local
12 Rule are you relying on for this --

13 MR. HILL: I'm relying on Local Rule --

14 THE COURT: -- limited --

15 MR. HILL: -- 33.3(a) which provides that unless
16 otherwise ordered by the Court at the commencement of discovery
17 interrogatories will be restricted to those seeking --

18 THE COURT: And you think this is the --

19 MR. HILL: -- names --

20 THE COURT: -- commencement of discovery now?

21 MR. HILL: I had thought that that rule applied until
22 the counterveiling rule, which at the end says you can ask for
23 detention in interrogatories. But here's what the rule asks
24 for beyond names, Your Honor. The interrogatories. Excuse me.
25 The interrogatory asks for "The nature and scope of the

1 employee's relevant knowledge, the origins and sources of the
2 employee's relevant knowledge, all positions and/or jobs held
3 by the employee in the P.A. and/or the PLO and any, all work or
4 employment performed by the employee for the P.A. and/or the
5 PLO at the times the employee acquired the relevant knowledge,
6 all positions and/or jobs currently held by the employee and
7 the P.A. and the PLO, and any and all work or employment
8 currently performed by the employee for the P.A. and/or the PLO
9 including without limitation a detailed description of (1) the
10 titles, nature, purposes, responsibilities and duties of any
11 and all such positions, jobs, work and/or employment; (2) the
12 ministries, agencies, divisions, bureaus, departments and/or
13 instrumentalities of the P.A. and/or the PLO and/or in" -- I'm
14 sorry -- "in and/or for which the employee performed such
15 positions, jobs, work and/or employment; (3) the rank or ranks
16 held by the employee in all positions, jobs, work and/or
17 employment; and (4) the names, titles and positions of all
18 officials and/or employees of the P.A. and/or the PLO to whom
19 the employee is directly or indirectly subordinate in all such
20 positions, jobs, work and/or employment." And we submit that
21 that's contrary to the Local Rule. The Local Rule says when
22 you identify someone, what you have to do is provide their
23 name, present or last address and referring to a natural
24 person, additionally their present or last known place of
25 employment, so --

1 THE COURT: Okay. So the issue is whether or not he
2 gets to answer those other questions related to these
3 individuals?

4 MR. HILL: When the [indiscernible] --

5 MR. TOLCHIN: That's one issue.

6 MR. HILL: Yeah.

7 MR. TOLCHIN: First, I think Mr. Hill has to correct
8 himself about something, a factual misstatement. I believe
9 Mr. Hill said that he produced three names. I see one. And
10 Mohammed Mustafa Mohammed Jebrini on page 7 of the response.
11 He says the Local Rules require him to give his address;
12 there's no address. And I respectfully submit, Your Honor,
13 that require -- requiring that he -- asking for each person to
14 say, what's his job and which entity does he work for, which is
15 basically what all that boils down to, is not unreasonable in
16 the slightest. Now, this --

17 THE COURT: Well, if -- actually, if you boiled it
18 down to that, there wouldn't be any question.

19 MR. TOLCHIN: Now, I would say this. What I said
20 before I could shortcut all this. If our -- our application,
21 Your Honor, was to strike their objections. Now, I don't know
22 whether any -- they've told us that only one person in the
23 whole P.A. has knowledge of the detention of Mr. Barghouti and
24 that person is Mister -- is General Jebrini. Now, if it truly
25 is their contention that he's the only person who's knowledge,

1 than I would ask are there any other people having their names
2 withheld from production because of the raft of objections. If
3 there are no people whose names are being withheld then how
4 would it prejudice the defendant to either withdraw the
5 objections or have them stricken? If there are people whose
6 names are being withheld then we should deal with those
7 objections.

8 THE COURT: Although I have -- well, all I can say
9 is, I don't see how any of the objections based on Local Rule
10 33 would prevent him from giving you names.

11 MR. HILL: Your Honor, I'm not holding back any
12 names. As of now we know three names. Mr. Tolchin hasn't read
13 the FedEx I sent him on Friday apparently but I sent him a
14 second supplemental response on Friday that lists two
15 additional names in addition to General Jebrini. It provides
16 their identification numbers, which is what they actually asked
17 for as opposed to addresses and that sort of thing.

18 THE COURT: Okay.

19 MR. HILL: So I'm not withholding any names that I
20 know right now. And we as counsel continue to learn names of
21 persons with knowledge, of employees with knowledge that are
22 responsive to these requests, we will produce them.

23 MR. TOLCHIN: That's --

24 MR. HILL: I'm moving [indiscernible] supplement --

25 MR. TOLCHIN: This is what we have here. We -- after

1 months of pursuing this question, the answer -- and if you sent
2 it to Federal Express on Friday I was in a deposition all day
3 yesterday and it could be it's waiting for me, but sending it
4 to me so that it arrives the day before the conference probably
5 isn't fair, but --

6 THE COURT: Compared to people who hand it to people
7 at the conference I think is not so bad if you get it the day
8 before.

9 MR. TOLCHIN: Okay.

10 MR. HILL: I still sent it as soon as I could, Your
11 Honor.

12 MR. TOLCHIN: The response that we have says we
13 provided the following name, Jebrini, and their investigation
14 is continuing and they'll supplement the answer.

15 Now, look, Jebrini was a general. I assume the
16 general doesn't go down to the jail cell and watch the prisoner
17 being detained. I assume that someplace between the jailer and
18 Jebrini there must have been others who had knowledge of this
19 detention. And Jebrini, the general, has people above him who
20 certainly set the pol -- decided whether to detain this guy or
21 not. I don't even know if Jebrini is -- if they claimed --

22 THE COURT: All right. I will say that it's
23 interesting that you take different approaches. You do sort of
24 like the broad answer, you give the narrow answer, although
25 given the things that we're talking about you're still in the

1 realm of assumption, Counsel. I should -- I mean, even as
2 you're describing it, it is not -- it does not follow to me
3 logically that the -- down the chain of command people know
4 names and details.

5 MR. TOLCHIN: So let them tell us --

6 THE COURT: But I understand --

7 MR. TOLCHIN: -- that there's nobody else.

8 THE COURT: Okay. Look, he's investigating. What
9 you started to say is, there is a general and people under him.
10 He's not -- the general is not doing -- all I'm responding to
11 and you have to listen when I'm saying this --

12 MR. TOLCHIN: Um-hum.

13 THE COURT: -- is the fact that other people below
14 don't know is not to me a surprise.

15 MR. TOLCHIN: Your Honor --

16 THE COURT: I mean, the way things happen in life is
17 that sometimes people down the line they know what they're
18 doing. They don't know who they're doing it to. They don't
19 know why they're doing it.

20 MR. TOLCHIN: Okay.

21 THE COURT: So it doesn't follow that there are
22 people who -- you could ask him, do you -- were you involved in
23 the detention of Barghouti and they'd say, "I have no idea."
24 They don't tell us. They just tell us, "Go pick somebody up."

25 MR. TOLCHIN: But here we are, Judge. Now it's March

1 20th.

2 THE COURT: And --

3 MR. TOLCHIN: Their first answer was November 10th.
4 On November 10th they said, "Our investigation is continuing."
5 Then they served a second answer which was dated March 9th.
6 And March 9th they say, "Okay, Jebrini, but our investigation
7 is continuing." Now I'm told there's two more people sitting
8 mi -- so we have November, December, January, February March,
9 we have five months. I don't -- what is this investigation?
10 When did they find out about Jebrini? How is it that Jebrini
11 is the 30(b)(6) notice? Did they -- is the 30(b)(6) witness?
12 Is Jebrini's knowledge only because of the 30(b)(6) notice?
13 They --

14 THE COURT: Well, aren't you going to ask him that?

15 MR. TOLCHIN: Well, we are, but before I stand here
16 accused that I'm going to be the cause of making discovery to
17 get extended when they've been hot on this investigation for
18 six months already since these interrogatories were served,
19 that's just not fair. And we haven't even talked about
20 Hashaika yet.

21 THE COURT: What's -- I'm not sure what fairness has
22 to do with it. I mean, I understand lawyers say who's causing
23 delays and who's not causing delays, but all I'm interested in
24 is making sure everybody does what they're supposed to do. So
25 I'm not basing it on his representation that you're delaying

1 anything if that's what he represented. What difference does
2 it make what he represents? You --

3 MR. TOLCHIN: Well, if it doesn't --

4 THE COURT: Do you think that --

5 MR. TOLCHIN: I don't know. If it doesn't make a
6 difference what a lawyer represents or misrepresents to the
7 Court, then I guess it's time to retire.

8 THE COURT: Well, no, no. That's not what I said.
9 I'm not going to base any decision on what a lawyer says unless
10 what the lawyer says is in an affidavit and he signs it.
11 Lawyers say lots of things in front of me. I'm not going to
12 base a decision on that. You think -- do you really think --
13 well, maybe you do. I'm sorry. You said you've had bad
14 experiences with judges. I don't consider -- I don't make any
15 decision based upon a lawyer's representation because you've
16 been throwing representations back and forth. You think that
17 I'm sitting here saying, oh, what he says is true, what he says
18 is true? I'd go crazy. That's just not going to work.

19 So if all this is in the defense of the question of
20 whether or not you're delaying discovery, I don't care who
21 delayed discovery. Discovery is going to fold. And no
22 decision is going to be based on whether or not you are the
23 party that was holding things up or he was the party holding
24 things up. I don't think either of you has anything to be
25 proud of there. So if this -- if that's all this is, then we

1 can sort of move along on this.

2 MR. TOLCHIN: Can we talk about Hashaika for a
3 minute?

4 THE COURT: Is it going to be anything different from
5 Barghouti in the sense that -- he's got to answer to the
6 interrogatories and, by the way, if he doesn't answer to
7 interrogatories and doesn't answer them adequately, he's not --
8 he's not going to cause discovery to end.

9 MR. TOLCHIN: Your Honor, we want the objections to
10 be ruled on. That's what we made application to.

11 THE COURT: I will rule on your objections. The
12 objections are -- but the objection is based on the Local
13 Rules.

14 MR. TOLCHIN: No, that's the one that he chose to
15 speak about. In his res -- in the actual responses there's a
16 litany of objections. They're all the usual over burdensome,
17 overbroad, et cetera, et cetera objections. And what -- from
18 our experience is what happens is if that people are not --
19 answers are not given and we don't know. But when he says the
20 only witness is Jebrini and now Hashaika, by the way, the
21 Jebrini thing becomes even more interesting because for --

22 THE COURT: Okay. So what's your point? What --

23 MR. TOLCHIN: We don't know if there's more people
24 out there who he's not telling us about because he believes
25 that it's protected by one of the objections that he's made.

1 If the objections were to be eliminated we'd get a straight
2 answer.

3 THE COURT: Which object -- you haven't named any
4 objection that could eliminate a name.

5 MR. HILL: I haven't made any objections that would
6 eliminate names, Your Honor. I've objected to the amount of
7 detail that he wants to -- me to provide along with the names
8 and I'm standing --

9 MR. TOLCHIN: So do we have a representation that no
10 names are --

11 THE COURT: Counsel --

12 MR. TOLCHIN: -- being withheld?

13 THE COURT: Counsel, if -- articulate for me any
14 objection that he has that you think would limit the names that
15 he'd be required to produce and I'll rule on it right now.

16 MR. TOLCHIN: Just give me a moment and I will. The
17 objection:

18 "The interrogatory is overly broad. It's unduly
19 burdensome, particularly with respect to its lack of a time
20 frame and the lack of any reasonable restrictions as to the
21 scope of information it requests, e.g., its request for
22 description of all positions and jobs held by the employee.
23 The interrogatory seeks disclosure of information that is
24 irrelevant to any of the issues presented by plaintiffs' first
25 amended complaint. The interrogatory is not reached" --

1 THE COURT: Are you saying all of these --

2 MR. TOLCHIN: All of these.

3 THE COURT: I don't see how any of these would
4 cause -- I don't see how these could be a defense to naming
5 anybody.

6 MR. TOLCHIN: Well, he's asserted them. He says, "I
7 object to this question because of these objections." The
8 objections go on for two pages. And then there's general
9 objections that preceded, so there's all together, 1, 2, 3, 4,
10 5, 6 pages of objections. And the same applies to the
11 Hashaika. If we strike the objections then we'll get -- then
12 we know we've got a straight answer.

13 THE COURT: Counsel, is there any -- do any of your
14 objections result in any names not being provided?

15 MR. HILL: No.

16 MR. TOLCHIN: Then why are they there?

17 THE COURT: Because lawyers do that.

18 MR. HILL: Because you asked for -- because he asked
19 for more than names. He asked for biographies on all of these
20 people and we object to that.

21 MR. TOLCHIN: All of these people. He's told us one
22 guy.

23 THE COURT: Okay.

24 MR. TOLCHIN: What do you mean "all of these people"?

25 THE COURT: Anything else? Counsel, we're going to

1 finish this in ten minutes if you -- if either you have
2 something more important or if you think this is the most
3 important thing on your list, we'll continue with it.

4 MR. TOLCHIN: Well, this is important to us, so is
5 Your Honor making a ruling as to the objections to the
6 Barghouti and Hashaika object -- interrogatories or is he
7 withdrawing the objections or --

8 THE COURT: I'm not going to rule on a multiple-phase
9 objection. If you're asking for anything in particular you
10 want me to rule on -- you named several things.

11 MR. TOLCHIN: No, I wanted you to rule as we wrote in
12 our letter. This was our original --

13 THE COURT: Okay.

14 MR. TOLCHIN: -- application.

15 THE COURT: But understand that the --

16 MR. TOLCHIN: This is what brought us.

17 THE COURT: -- the objections go to your entire
18 questions not just the question of names.

19 MR. TOLCHIN: Well, they don't specify that.

20 There's --

21 THE COURT: And that's why I asked --

22 MR. TOLCHIN: -- six pages of objections.

23 THE COURT: That's why I asked counsel, do any of the
24 objections go to the production of names. He said no.

25 MR. TOLCHIN: Okay. So --

1 THE COURT: You --

2 MR. TOLCHIN: -- that does not apply -- does that
3 mean that for both Barghouti and Hashaika, because I think the
4 question was only about --

5 MR. HILL: Yes. I said that in my letters to the
6 Court.

7 MR. TOLCHIN: No names are being withheld.

8 THE COURT: No names are being withheld.

9 MR. TOLCHIN: And no names will be withheld as their
10 expeditious investigation continues?

11 THE COURT: Okay. I'm not sure even what you're
12 asking now.

13 MR. TOLCHIN: They say that they're still
14 investigating to determine who knows about these things.
15 They're six months into an investigation, so I don't know what
16 that -- that investigation may reveal 100 people who have
17 knowledge. Are they going to withhold any --

18 THE COURT: My question --

19 MR. TOLCHIN: -- of those names --

20 THE COURT: My question --

21 MR. TOLCHIN: -- because of these objections?

22 THE COURT: You understand, my question was do any of
23 the objections go to withholding of names. The answer was no.
24 That seems to be pretty straightforward. I'm not sure where
25 you're going beyond that.

1 MR. TOLCHIN: Okay.

2 MR. HILL: Your Honor, you mentioned we only have ten
3 more minutes. I do have two issues I'd like you to resolve if
4 we could and I don't want to be filibustered if that's
5 possible.

6 MR. TOLCHIN: Nobody is filibustering.

7 THE COURT: Okay.

8 MR. HILL: Your Honor, particularly with respect to
9 the damages. You've now --

10 THE COURT: Okay.

11 MR. HILL: -- the initial disclosures require the
12 calculations. You've ordered them twice. We still don't have
13 them.

14 THE COURT: Well, what is the story with the damages?
15 We've been going on with that for a while.

16 MR. TOLCHIN: We answered the interrogatories.

17 THE COURT: Huh?

18 MR. TOLCHIN: We supplemented our production. What
19 we're down to quibbling about is for some categories of damages
20 the plaintiffs -- is what I understand the dispute between us
21 is that for some categories of damages, for example, things --
22 future lost wages, future medical expenses and the like,
23 that -- those categories of damages will have to be supported
24 by expert testimony and under the case law that we cited in
25 our --

1 THE COURT: So you're saying that you've answered
2 everything except things like future lost damages, which
3 require an expert?

4 MR. TOLCHIN: Correct. And as to those we gave an
5 answer which said we'll require expert testimony and we pointed
6 out to defendants that under the scheduling order this case --

7 THE COURT: Okay. So you disagree with --

8 MR. TOLCHIN: -- fact discovery --

9 THE COURT: -- that?

10 MR. HILL: Well, Your Honor, quickly, the initial
11 disclosure rules require that calculations be disclosed
12 regardless of whether they require expert testimony. Mr.
13 Tolchin has been before Your Honor twice and twice promised you
14 that he would give us these calculations in open court and you
15 have twice ordered it and we still don't have them. And it was
16 only on this last time that he now says he needs an expert and
17 he wants to delay and give them to me a year from now.

18 MR. TOLCHIN: That's not true.

19 MR. HILL: I respectfully submit that that is not
20 fair. In addition, the initial --

21 THE COURT: Well, let me just say --

22 MR. HILL: -- disclosures require --

23 THE COURT: -- my recollection of the last conference
24 is this. You said there -- you had some difficulty getting in
25 touch with the plaintiffs and defense counsel wanted to give

1 you a short period of time to say, okay, we'll -- we need to
2 have an answer by then. You said, okay, that sounds like too
3 short a period of time. You don't want to commit to something
4 which you might not be able to meet. And then we came up with
5 a time frame and I said, okay, let's do it by then. I don't
6 recall anything about some of the answers not being able to be
7 given. I agree with defense counsel there.

8 And I don't think that you had said that one of the
9 reasons for the not having answers was that some of it required
10 expert testimony. I'm not saying that you're not saying that
11 now.

12 MR. TOLCHIN: And our original response is that they
13 didn't like that brought us here the last time, we had said the
14 same thing. When -- when I told Your Honor about getting in
15 touch with the plaintiffs was that some of the plaintiffs, in
16 fact many of them have waived numerous categories of damages.
17 Many of the plaintiffs have waived any claim, for example, for
18 future medical expenses or for medical expenses that were
19 reimbursed by a health insurance provider. So we eliminated --
20 and I'll just hold it up. You can --

21 THE COURT: Okay. But --

22 MR. TOLCHIN: You can perceive it even from there.
23 We've elimina -- we've provided them a chart.

24 THE COURT: So Counsel -- no, the bottom line is,
25 what's this issue that you're now raising about certain kind of

1 damages. You're saying you brought that up at the last
2 conference or you put it in your --

3 MR. TOLCHIN: No. I'm saying that in the response
4 that they complained about last time, that we discussed at the
5 last conference we already took the position that certain
6 categories of damages would require expert testimony. That's
7 not something new.

8 THE COURT: Okay.

9 MR. TOLCHIN: That was there all along.

10 THE COURT: All right.

11 MR. TOLCHIN: Last time Your Honor said we should
12 give more detail. We should break down the categories of
13 damages even more. Okay.

14 THE COURT: Okay. If -- are you saying that he did
15 not bring this up before?

16 MR. TOLCHIN: Your Honor, we --

17 MR. HILL: You're welcome to go back and look at the
18 record. I don't recollect Mr. Tolchin saying to you, Judge, I
19 need more time because I need an expert. In fact, I
20 recollect -- and I believe the transcript bears this out -- Mr.
21 Tolchin unequivocally agreeing to provide these in September
22 within two weeks and then he failed to do so. And in
23 November --

24 THE COURT: But even if that's true, I --

25 MR. HILL: So --

1 MR. TOLCHIN: But that means to provide everything
2 that's --

3 THE COURT: Counsel, Counsel --

4 MR. HILL: So let me just the merits --

5 MR. TOLCHIN: Even if that's true --

6 MR. HILL: Yes.

7 THE COURT: -- if in his responses he had made it
8 clear that some category of damages are categories which
9 require an expert, I'm not going to -- you know, if he didn't
10 mention it at the conference it doesn't mean that it wasn't an
11 issue that was brought up before.

12 MR. HILL: Well, I think there's an issue of waiver
13 their having agreed to do it on the record, but get into the
14 merits --

15 THE COURT: Well, I'd probably disagree with you on
16 that.

17 MR. HILL: Okay. Fair enough. And you're the Judge
18 so you get to do that.

19 THE COURT: Okay.

20 MR. HILL: So let me make this point, then. If we
21 wait until a year from now for me to get these calculations
22 from his experts, I will not effectively be able to do
23 deposition discovery of these plaintiffs. These plaintiffs are
24 claiming that they have ongoing medical conditions that require
25 future treatment that an expert is then going to calculate the

1 numerical value of it. Some of these plaintiffs are claiming
2 that they've not been able to work or will not be able to work
3 in the future because of their injuries and that they're going
4 to have an expert do an economic calculation based on that
5 information.

6 Well, 34 document requests that I have issued to
7 these plaintiffs and the initial disclosure rule itself
8 requires them to produce the documents they would rely on in
9 support of that calculation. I have got no documents about
10 wages from these --

11 THE COURT: All right. Counsel --

12 MR. HILL: -- plaintiffs. I've had none of that.

13 THE COURT: At this point, I just disagree with you.
14 All right. You're certainly entitled to know what the
15 plaintiffs are going to say in terms of what their damages are,
16 but for example, if you took a typical damages case and the --
17 and you asked the plaintiff, okay, what's wrong with you,
18 asking about all their mental and physical ills, I mean, is it
19 continuing to bother you, what kinds of things is affecting
20 you, and then they take an expert and they take the answers
21 that are -- I would certainly say that the expert would be
22 bound by any limitation in the factual answers you elicit from
23 the plaintiffs. But the fact that an expert then takes the
24 answers and then says what that means in terms of, well,
25 they're going to live this long and this is going to -- I think

1 that's the way it works out in --

2 MR. HILL: Will the experts also be bound by the
3 documents the plaintiffs produce because I've received no
4 documents that support the calculations.

5 THE COURT: If anything that the plaintiffs are going
6 to rely on in terms of their damages you have not received then
7 I don't expect the experts to rely on them.

8 MR. HILL: May we have a date by which the plaintiffs
9 will be ordered to produce that material to me so I can begin
10 to use it in --

11 THE COURT: Okay. Just in --

12 MR. HILL: -- depositions --

13 THE COURT: Just to be clear, I think as a matter of
14 the factual predicate for any damage calculation that the
15 experts do the plaintiffs are required to produce that to you.
16 Two things will happen. Okay. He -- the plaintiff will be
17 required to produce that in accordance what they -- what
18 they've been producing in terms of the damages that -- or don't
19 require an expert. Whatever time limit will --

20 MR. HILL: Those dates are past, Your Honor.

21 THE COURT: Okay. If you have some documents that
22 are going to document injuries of the plaintiffs, Counsel,
23 unless you speak now, you forever hold your peace.

24 MR. TOLCHIN: Say that again.

25 THE COURT: If you have any documents about the

1 damages that the plaintiffs have suffered and you haven't
2 produced them to the defendants, you either speak now or hold
3 your peace, which --

4 MR. TOLCHIN: I'm not sure --

5 THE COURT: Which means that I don't want to -- I
6 don't want an expert coming in here and saying, okay, I looked
7 at document 747 and the defendant says, I've never seen 747.

8 Okay. If you have an expert who relies on a document you
9 didn't produce to the defendants, that expert's testimony is
10 not going to be allowed.

11 MR. TOLCHIN: Whatever documents our experts will
12 rely on either have been or will have been produced to the
13 defendants, every document that we have?

14 THE COURT: Well, I'm not concerned about the "have
15 been." It's the "will have" been that's the issue.

16 MR. TOLCHIN: Every document that we have that
17 pertains to -- you know --

18 THE COURT: I --

19 MR. TOLCHIN: If we have a person who was killed in a
20 terrorist attack --

21 THE COURT: Well, Counsel, just look -- Counsel,
22 look --

23 MR. TOLCHIN: -- and we're talking about fair loss of
24 wages --

25 THE COURT: Counsel, Counsel, I just want to make it

1 clear. I don't want any last-minute documents being produced
2 by your client. If they have any documents that pertain to
3 their injuries either physical or emotional, I would expect
4 them to have been produced to the defendant. And I would
5 expect them to be produced already. To the extent that they
6 haven't, then you can expect that presumptively you don't get
7 to have your expert opine on what those documents mean.

8 MR. TOLCHIN: Your Honor, we are -- like the
9 defendants we are constantly investigating and if we come
10 across or discover or realize that we haven't looked for or
11 found some pile of W-2s from the -- from one of the decedents
12 and say, oh, look, here's some additional documents that go to
13 what this poor woman would have earned --

14 THE COURT: Okay.

15 MR. TOLCHIN: -- had she not been blown up --

16 THE COURT: I want to repeat. Presumptively if you
17 haven't produced it you don't get to produce it. If you think
18 that you can overcome the presumption, give it a shot. I'll
19 give you -- and that's -- you always -- each of you has that
20 opportunity if -- I mean, look. I mean, there could be a
21 document in a safe someplace that nobody has. If you come in
22 and show that, you know, there was a -- you know, a police raid
23 and they came up with a document and nobody knew it existed
24 before, you know, we'll deal with it then but --

25 MR. TOLCHIN: The only thing that isn't fair is --

1 you know, the -- just take a look. For six months they've been
2 trying to find out who knows about something.

3 THE COURT: The next -- be -- Counsel, Counsel --

4 MR. TOLCHIN: I'm working with estates of dead
5 people.

6 THE COURT: Counsel, I've made -- I've told you what
7 it is. If -- somehow you think that I'm unreasonable must be
8 because you're suggesting that your reason won't get in here.

9 MR. TOLCHIN: No, no. I'm just suggesting it's not
10 right to -- or it's not fair to foreclose us from supplementing
11 our production. It's just like they supplemented on -- by
12 FedEx on Friday. Why can't I serve a supplemental production?

13 THE COURT: Counsel, sometimes I get the feeling that
14 you don't even listen to me. Okay. What I said was, if you
15 haven't produced documents presumptively those documents will
16 not be used. You know what the word "presumptively" means? I
17 have to get that? That means -- and then I said, if you come
18 across something if you think you can carry a burden, by all
19 means do it. What in there prevents you from doing anything?

20 MR. TOLCHIN: Well, I just don't understand why there
21 needs to be a burden. As long as discovery is -- you know, we
22 haven't had a deposition. And I could understand if we come up
23 with --

24 THE COURT: Counsel, that's my ruling.

25 Now, with respect to the --

1 MR. HILL: Whether the Rule 35 should be
2 [indiscernible] --

3 THE COURT: Rule 35 exams.

4 MR. HILL: Yes.

5 MR. TOLCHIN: That application I think was just made
6 and we're still in our time to respond to it. I don't think
7 that's teed up for today.

8 MR. HILL: The only reason I ask --

9 THE COURT: I just want to know what the situation
10 is.

11 MR. TOLCHIN: Because I do want to put in something
12 in writing on that and I --

13 THE COURT: Well, what's the situation? I don't even
14 know what --

15 MR. HILL: About a month ago I started asking for
16 dates to try and get these 38 plaintiffs that have got mental
17 health claims examined by our psychiatrists and psychologists.
18 I haven't gotten any dates yet from the plaintiffs. I'm trying
19 to move forward on this --

20 MR. TOLCHIN: But you have gotten what? Don't
21 believe that one. My associates called you yesterday and you
22 didn't call --

23 THE COURT: Okay. Counsel, Counsel, Counsel --

24 MR. TOLCHIN: -- him back to tell the schedule --

25 THE COURT: Counsel --

1 MR. HILL: One area of disagreement apparently is
2 whether this should be recorded by video or other means. And
3 the presumption in the case law says they should not be because
4 it negatively impacts the examination.

5 THE COURT: Okay. I don't want the arguments. I
6 just want to know what the party position is on it.

7 MR. HILL: So my position is they ought not to be
8 recorded; the plaintiffs' position is that they should and
9 we're asking Your Honor to rule on expeditiously.

10 THE COURT: Okay. Is that what the dispute is?

11 MR. TOLCHIN: More or less. We're dealing with in
12 many cases children and we're dealing with many cases people
13 who are speaking in a foreign language --

14 THE COURT: Counsel, Counsel, you know, you don't
15 realize how difficult it is, you know. I like to ask very
16 specific questions and for some reason I can't get answers to
17 the questions I ask. I get speeches. All I want to know is
18 that's the dispute. If that's the dispute you have reasons why
19 you think it shouldn't be, he has reasons why it shouldn't be.
20 I'm not asking why, but if that's the dispute I understand. I
21 understand what the dispute is. You'll submit something. You
22 don't need to argue it now.

23 MR. TOLCHIN: Okay.

24 THE COURT: You're not -- I mean, what's the point of
25 arguing it now when you say you've got to do a submission

1 anyways? I don't see that.

2 MR. HILL: Your Honor, I would ask that you rule as
3 promptly as your calendar allows. We're trying to start these
4 at the end of April and obviously whether they're recorded or
5 not is material to when they can take place.

6 THE COURT: Okay. Anything else? All right.

7 [Pause in the proceedings.]

8 Okay. Michael, put this down for either the last
9 week in April or first week in May or -- I'm not sure what our
10 schedule is.

11 MR. HILL: And, Your Honor, the parties have
12 discussed taking depositions in the Middle East the last week
13 in April so --

14 THE COURT: You mean, beginning on the 30th?

15 MR. HILL: -- perhaps the first week in May. I'm
16 sorry, no. Beginning on the 22nd, so it might be the week
17 before Your Honor is referring to.

18 THE COURT: So this would be great to do it right
19 after that.

20 MR. HILL: That's okay with me, Your Honor.

21 THE COURT: We'll all be in a good mood.

22 MR. TOLCHIN: Judge, in another case Judge Scheindlin
23 suggested that we bring her to rule at the -- to make rulings,
24 that we bring her over there.

25 THE COURT: I'm sure she meant that in all

1 seriousness.

2 MR. TOLCHIN: Yes, she did.

3 MR. HILL: So the last week of April, the first week
4 of May she can find [indiscernible].

5 THE COURT: Michael.

6 THE CLERK: Yes, sir. May 7th at 2:30 p.m.

7 MR. HILL: May I ask -- I don't have my calendar with
8 me because they took it. Can you tell me what date --

9 MR. TOLCHIN: That's a Monday.

10 MR. HILL: If it could be moved to any other day
11 after that. I'll be in New Orleans that day and that's very
12 important, Your Honor. That's Jazz Fest. Never miss Jazz
13 Fest.

14 MR. TOLCHIN: You didn't invite me.

15 MR. HILL: No. Any day after May 7th will be
16 excellent.

17 THE CLERK: Tuesday, May 8th.

18 MR. HILL: Thank you.

19 MR. TOLCHIN: 10:00 a.m.?

20 THE CLERK: 10:00 a.m.

21 MR. HILL: I at least will be in a very good mood.

22 THE COURT: We're adjourned.

23 MR. HILL: Thank you, Your Honor.

24 MR. TOLCHIN: Thank you, Your Honor.

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1 I certify that the foregoing is a court transcript from an
2 electronic sound recording of the proceedings in the above-
3 entitled matter.

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6 Ruth Ann Hager, C.E.T.**D-641

7 Dated: March 21, 2012

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